

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 551 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 No

BHAVESHKUMAR CHIMANBHAI PATEL

Versus

CHIMANBHAI KASHIBHAI PATEL

Appearance:

MR SK BUKHARI for Petitioner

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 29/06/2000

C.A.V. JUDGEMENT

The appellant seeks to challenge the order of the learned 7th Joint Civil Judge (S.D.), Vadodara passed below Ex.5 in Special Civil Suit No.279 of 1999 whereby his application was partly allowed. The appellant has submitted in his application at Ex.5 a family-tree and annexed a list of immovable properties in question,

against the transfer of which an interim injunction was prayed. The second prayer as regards a particular building in possession and residential use of the appellant has been granted, and as regards the third prayer to restrain the respondents from interfering with the agricultural operation being carried out by the appellant, it has been rejected on the ground that no evidence whatsoever regarding the same had come on record. Thus, the grievance of the appellant is restricted to vacation of the interim relief in respect of sale, transfer, mortgage or gift of the immovable properties listed in the annexure by any of the respondents.

2. The learned Judge of the trial Court has, on the basis of the material placed on record, found that respondent No.1 is the father of the appellant and karta of the coparcenary properties involved in the suit. Respondent No.1 has obtained a power of attorney from respondents Nos.2 to 9 and seems to have entered into a development agreement or allotted blocks to other respondents. It is the case of the appellant that respondents Nos.1 to 9 have refused to give accounts of such transactions as also any account in respect of the other lands comprised in Survey No.346/2. It appears that twice Court Commissioners are appointed and panchnamas have been prepared which revealed that 24 houses were completely constructed and possession was handed over to the allottees and some of the allottees were staying in the disputed blocks. Thus, the appellant was found to have waited for three to four years while such extensive construction was carried out. Therefore, the delay and laches on the part of the appellant and the plea of the respondents that a coparcener has no right to get an ad-interim injunction against the karta of a Joint Hindu Family, has weighed with the trial Court and, accordingly, the application of the appellant was only partly allowed to protect his possession of the residential house.

3. The learned advocate for the appellant has not shown as to how a prima facie case was made out for any further relief. He has not referred to the order of clarification below Ex.52 filed in the same suit although that order is challenged in the memo of appeal. However, he has emphasised the fact that the schedule of immovable properties annexed with the Civil Suit enumerated eleven immovable properties in respect of which no interim relief is granted. Except making this grievance, no material is placed on behalf of the appellant to suggest that such other immovable properties involved in the suit

were in danger of being wasted or mismanaged or alienated or that he was in possession of such properties and threatened to be dispossessed.

4. Thus, in short, no case is made out to interfere with or alter the impugned order granting limited relief to the appellant. The appeal is, therefore, summarily dismissed with no order as to costs.

Sd/-

(KMG Thilake)

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